

1 BROWER LAW GROUP
2 A Professional Corporation
3 STEVEN BROWER (SBN: 93568)
4 25201 La Paz Road, Suite 202
5 Laguna Hills, CA 92653
6 Telephone: (949) 668-0825
7 Email: Steve@BrowerLawGroup.com

8 MONTGOMERY PURDUE
9 BLANKINSHIP & AUSTIN PLLC
10 Andrew R. Chisholm
11 WA State Bar No. 30673
12 Christopher M. Reed
13 WA State Bar No. 49716
14 701 Fifth Avenue, Suite 5500
15 Seattle, WA 98104
16 Telephone: (206) 682-7090
17 Email: achisholm@mpba.com
18 Email: creed@mpba.com
19 Fax: (206) 625-9534

20 Attorneys for Plaintiff
21 Glacier Northwest, Inc.

22 **UNITED STATES DISTRICT COURT**
23 **WESTERN DISTRICT OF WASHINGTON**

24 GLACIER NORTHWEST, INC.,

25 Plaintiff,

26 v.

27 CEMENTAID INTERNATIONAL
28 MARKETING, LTD.,

Plaintiff and the Defendant.

Case No. 2:18-cv-00556 TSZ

AMENDED COMPLAINT FOR:
1) DECLARATORY JUDGMENT;
2) BREACH OF CONTRACT;
3) DECLARATORY JUDGMENT;
4) BREACH OF CONTRACT.

DEMAND FOR JURY TRIAL

GENERAL ALLEGATIONS

Jurisdiction and Parties

1. This Court has original jurisdiction over this matter, pursuant to
28 U.S.C. § 1332, because there is complete diversity of citizenship between the
Plaintiff and the Defendant and there is more than \$75,000 in controversy.

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1 2. Pursuant to the contract between the parties, as more fully described
 2 below, each of the parties explicitly consented to the jurisdiction of the United States
 3 District Court for the Western District of Washington.

4 3. Plaintiff, Glacier Northwest, Inc. (“Glacier Northwest”), is a
 5 corporation organized and existing under the laws of the State of Washington.
 6 Plaintiff Glacier Northwest is a wholly owned subsidiary of CalPortland Company,
 7 with a principal place of business in the State of California.

8 4. Defendant, Cementaid International Marketing Ltd. (hereinafter
 9 “Cementaid”), is a Hong Kong Company, with a principal place of business in Hong
 10 Kong, SAR, China. The contract between Glacier Northwest and Cementaid is
 11 written in English, the parties have conducted their business communications in
 12 English, and the attorney for Cementaid, who has recently communicated with
 13 counsel for Glacier Northwest, has done so in English. Glacier Northwest is
 14 informed and believes, and therefore alleges, that the senior executives of Cementaid
 15 are fluent in the English language. Therefore, Glacier Northwest will submit this
 16 Complaint for service, pursuant to the Hague Convention on Service of Process, in
 17 the English language.

18 5. The Parties entered into a written “Marketing and Material Supply
 19 Agreement” (“Agreement”) effective December 31, 2001. Pursuant to the
 20 Agreement Glacier Northwest was the exclusive distributor of certain concrete
 21 related products within a specified geographic area. As relevant herein, the list of
 22 products included Caltite and the geographic territory included California.

23 6. Central Concrete purchased Caltite, a waterproofing additive, from
 24 Glacier Northwest. Central Concrete used that product in various construction
 25 projects including one commonly known as Millennium Tower, which is located in
 26

1 San Francisco, California and another commonly known as Axis, which is located in
 2 San Jose, California.

3 **MILLENIUM BACKGROUND**

4 7. Several lawsuits, related to the development of the Millennium Tower,
 5 are now pending in the California Superior Court, for the County of San Francisco.
 6 One of those lawsuits is entitled *Millennium Tower Association v. Mission Street*
 7 *Development, LLC et al*, case number 17-557830. That lawsuit alleges numerous
 8 problems with the condition of the Millennium Tower including, but not limited to,
 9 water intrusion through foundation systems and slabs.

10 8. A cross-complaint was subsequently filed in that action by Webcor
 11 Construction LP. Glacier Northwest is named as a cross-defendant in the Webcor
 12 cross-complaint. Glacier Northwest is informed and believes that its only
 13 relationship to Webcor, as it relates to the Millennium Towers, is the sale of
 14 Cementaid's product to Central Concrete which subsequently utilized that product in
 15 concrete work at the Millennium Tower.

16 9. Pursuant to the Agreement, Cementaid agreed to defend, indemnify and
 17 hold Glacier Northwest harmless from and against any product liability claims related
 18 to the Cementaid products.

19 10. On February 22, 2018, March 20, 2018, and March 22, 2018, Plaintiff
 20 sent letters to Cementaid demanding that Cementaid honor its contractual obligation
 21 to indemnify Glacier Northwest, but Cementaid has failed and refused to do so.
 22 Recently an attorney for Cementaid has stated that formal service will be required
 23 before Cementaid will respond to this lawsuit, further indicating that Glacier
 24 Northwest reasonably determined that it would be required to incur the cost of
 25 counsel in this matter in an effort to obtain the indemnification to which it is entitled
 26 in this matter.

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11. Glacier Northwest has been required to retain counsel to defend the
 12 Webcor cross-complaint, the cost of which has already exceeded the \$75,000
 13 jurisdictional threshold for diversity jurisdiction and such damages are continuing
 14 and increasing.

5 **AXIS BACKGROUND**

6 12. A lawsuit, related to the development of Axis, is now pending in the
 7 California Superior Court, for the County of Santa Clara. The lawsuit is entitled *Axis*
 8 *Homeowners Association v. Almaden Tower Venture, LLC et al*, case number
 9 17CV314037. The lawsuit alleges numerous problems with the condition of the Axis
 10 project including, but not limited to, water intrusion.

11 13. A cross-complaint was subsequently filed in that action by Webcor
 12 Construction LP. Glacier Northwest is named as a cross-defendant in the Webcor
 13 cross-complaint. Glacier Northwest is informed and believes that its only
 14 relationship to Webcor, as it relates to the Axis project, is the sale of Cementaid's
 15 product to Central Concrete which subsequently utilized that product in concrete
 16 work at the Axis project.

17 14. Pursuant to the Agreement, Cementaid agreed to defend, indemnify and
 18 hold Glacier Northwest harmless from and against any product liability claims related
 19 to the Cementaid products.

20 15. Glacier Northwest, by the filing and service of this Amended Complaint,
 21 hereby tenders a demand to Cementaid to honor its contractual obligation to
 22 indemnify Glacier Northwest.

23 16. Glacier Northwest has been required to retain counsel to defend the
 24 Webcor cross-complaint, the cost of which Glacier Northwest is informed and
 25 believes will exceed \$75,000, and such damages are continuing and increasing.

FIRST CLAIM FOR RELIEF
DECLARATORY JUDGMENT

17. Plaintiff realleges and incorporates by reference, as though set forth in full, paragraphs 1 through 11 of this Amended Complaint.

18. Glacier Northwest has already incurred significant costs of defense in relation to *Millennium Tower Association v. Mission Street Development, LLC et al*, which defense costs are continuing. Glacier Northwest may also be obligated to pay the costs of a settlement or a judgment

19. Cementaid has failed and/or refused to acknowledge its obligation to indemnify Glacier Northwest, both for amounts already incurred and for amounts which will be incurred in the future.

20. There is an actual and present controversy between Glacier Northwest and Cementaid regarding the indemnification of Glacier Northwest under the terms of the Agreement such that this Court should issue a declaratory judgment in favor of Glacier Northwest, and against Cementaid, finding that Cementaid is obligated to defend and indemnify Glacier Northwest for the past, present and future costs of defense in the Millennium Tower Suit in addition to any amounts which Glacier Northwest is obligated to pay for a settlement or judgment.

SECOND CLAIM FOR RELIEF

BREACH OF CONTRACT

21. Plaintiff realleges and incorporates by reference, as though set forth in full, paragraphs 1 through 11 of this Amended Complaint.

22. Since as early as February 22, 2018 and thereafter, Cementaid has been in breach of the Agreement by failing and refusing, and continuing to fail and refuse, to pay Glacier Northwest for ongoing reasonable and necessary amounts incurred by Glacier Northwest in defense of the Millennium Tower Suit.

THIRD CLAIM FOR RELIEF
DECLARATORY JUDGMENT

23. Plaintiff realleges and incorporates by reference, as though set forth in full, paragraphs 1 through 6 and 12 through 16 of this Amended Complaint.

24. Glacier Northwest has already incurred costs of defense in relation to *Axis Homeowners Association v. Almaden Tower Venture, LLC et al*, which defense costs are continuing. Glacier Northwest may also be obligated to pay the costs of a settlement or a judgment

9 25. Cementaid has failed and/or refused to acknowledge its obligation to
10 indemnify Glacier Northwest, both for amounts already incurred and for amounts
11 which will be incurred in the future.

12 26. There is an actual and present controversy between Glacier Northwest
13 and Cementaid regarding the indemnification of Glacier Northwest under the terms
14 of the Agreement such that this Court should issue a declaratory judgment in favor
15 of Glacier Northwest, and against Cementaid, finding that Cementaid is obligated to
16 defend and indemnify Glacier Northwest for the past, present and future costs of
17 defense in the Axis Suit in addition to any amounts which Glacier Northwest is
18 obligated to pay for a settlement or judgment.

FOURTH CLAIM FOR RELIEF
BREACH OF CONTRACT

21 27. Plaintiff realleges and incorporates by reference, as though set forth in
22 full, paragraphs 1 through 6 and 12 through 16 of this Amended Complaint.

23 28. Since as early as the date on which this Amended Complaint is being
24 filed, and thereafter, Cementaid has been in breach of the Agreement by failing and
25 refusing, and continuing to fail and refuse, to pay Glacier Northwest for ongoing

1 reasonable and necessary amounts incurred by Glacier Northwest in defense of the
2 Axis Suit.

3 WHEREFORE, Plaintiff prays for judgment as follows:

4 ON THE FIRST Claim for Relief:

5 1. For a Declaratory Judgment in favor of Plaintiff and against Defendant
6 on every issue properly brought before this Court.

7 2. Such other and further Declaratory Judgment as may appear proper at
8 the time of determination.

9 ON THE SECOND Claim for Relief:

10 3. For all amounts incurred by Plaintiff which amounts Defendant has
11 agreed to pay to or on behalf of Plaintiff under the Agreement.

12 4. For interest on sums which were not timely paid to Plaintiff.

13 5. For all other damages incurred by Plaintiff as a result of any breach of
14 contract.

15 ON ALL Causes of Action:

16 6. For interest on all sums where properly owed.

17 7. For costs of suit incurred herein.

18 8. For such other and further relief as the court may deem just.

19 DATED: June 7, 2018

20 BROWER LAW GROUP
A Professional Corporation

21
22 By: /s/ Steven Brower
23 STEVEN BROWER
24 California SBN: 93568
25 25201 La Paz Road, Suite 202
26 Laguna Hills, CA 92653
27 Telephone: (949) 668-0825
28 Email: Steve@BrowerLawGroup.com
Attorneys for Plaintiff Pro Hac Vice

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3 By: /s/ Christopher M. Reed
4 Andrew R. Chisholm
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9 Seattle, WA 98104
Telephone: (206) 682-7090
Email: achisholm@mpba.com
Email: creed@mpba.com
Fax: (206) 625-9534
10 Attorneys for Plaintiff – Local Counsel

DEMAND FOR JURY TRIAL

Plaintiff Glacier Northwest hereby demands trial by jury as to each and every issue as to which it is entitled to demand a jury.

DATED: June 7, 2018

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By: /s/ Steven Brower
STEVEN BROWER
California SBN: 93568
25201 La Paz Road, Suite 202
Laguna Hills, CA 92653
Telephone: (949) 668-0825
Email: Steve@BrowerLawGroup.com
Attorneys for Plaintiff Pending Pro Hac
Vice Admission

MONTGOMERY PURDUE BLANKINSHIP & AUSTIN PLLC

By: /s/ Christopher M. Reed
Andrew R. Chisholm
WA State Bar No. 30673
Christopher M. Reed
WA State Bar No. 49716
701 Fifth Avenue, Suite 5500
Seattle, WA 98104
Telephone: (206) 682-7090
Email: achisholm@mpba.com
Email: creed@mpba.com
Fax: (206) 625-9534
Attorneys for Plaintiff – Local Counsel